



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 9, 1996

Mr. Robert A. Schulman  
Schulman, Walheim, Heidelberg & Acevedo  
745 E. Mulberry, Suite 700  
San Antonio, Texas 78212

OR96-1620

Dear Mr. Schulman:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 36200.

The Alamo Community College District (the "district") received a request for copies of "all complaints filed against the District's security and police force in the last two years." You have submitted for our review copies of the requested information. You assert that the requested information is excepted from disclosure pursuant to section 552.103 of the Government Code.

To secure the protection of section 552.103(a) a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.-Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. Under Open Records Decision No. 638 (1996), a governmental body may establish that litigation is reasonably anticipated by showing that (1) it has received a claim letter from an allegedly injured party or his attorney and (2) the governmental body states that the letter complies with the notice of claim provisions of the Texas Tort Claims Act ("TTCA") Civ. Prac. and Rem. Code § 101.

You have submitted to this office a copy of a "notice of claim" letter from an attorney who represents an injured party. The attorney's letter indicates that his client believes his civil rights were violated.<sup>1</sup> Because your request for a decision from this office was made

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<sup>1</sup> You made no other arguments against disclosure, if however, you believe that portions of responsive documents contain information otherwise made confidential by law, you should specifically mark those portions and seek a decision from this office concerning those portions.

prior the issuance of Open Records Decision No. 638 (1996), this office will assume that you are representing that the notice letter you received satisfies the requirements of the TTCA. We have reviewed the records, and our review shows that they are related to the anticipated litigation. Thus, the district has met its burden of showing that litigation is reasonably anticipated and the information at issue may be withheld pursuant to section 552.103(a).<sup>2</sup> If, however, this assumption is incorrect and you are not representing that the notice letter complies with the TTCA, then you have not met your burden of showing that litigation is reasonably anticipated for purposes of section 552.103(a) and must release the requested information.

We note that the applicability of section 552.103(a) ends if the other parties to the anticipated litigation obtain the information or when the litigation concludes. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 350 (1982) at 3, 349 (1982) at 2. We also note that since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, Open Records Decision No. 542 (1990) at 4, the TDCJ could choose to release any information that is not otherwise confidential. Gov't Code § 552.007.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/SAB/ch

Ref.: ID# 36200

Enclosures: Submitted documents; Open Records Decision No. 638 (1996)

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<sup>2</sup> We also note that if in the future you assert that section 552.103(a) is applicable on the basis of a notice of claim letter, you should affirmatively represent to this office that the letter complies with the requirements of TTCA.

cc: Mr. David Bryant  
Investigator  
Moore, Landrey, Garth, Jones, Burmeister &  
Hulett  
390 Park Street, Suite 500  
Beaumont, Texas 77701  
(w/enclosure-Open Records Decision No. 638 (1996))